

401 KAR 5:075. Cabinet review procedures for KPDES permits.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.10-420, 224.10-440, 224.10-470, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 124, 33 U.S.C. 1251-1387

STATUTORY AUTHORITY: KRS 224.10-100(19), 224.16-050, 224.70-110, 33 U.S.C. 1251-1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 subject to the conditions imposed in 33 U.S.C. 1342(b) and (d). This administrative regulation establishes the procedures for receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. An application for a KPDES permit shall be submitted and reviewed as established in 40 C.F.R. 124.3, effective July 1, 2009.

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation. A KPDES permit modification, revocation and reissuance, or revocation shall be as established in 40 C.F.R. 124.5, effective July 1, 2009, except that a request for a hearing shall be made as established in Section 13 of this administrative regulation.

Section 3. Draft Permits. Preparation or denial of a draft permit shall be as established in 40 C.F.R. 124.6, effective July 1, 2009.

Section 4. Fact Sheets. A fact sheet shall be prepared as established in 40 C.F.R. 124.8, effective July 1, 2009.

Section 5. Public Notice of Permit Actions and Public Comment Period. Public notice of a permit action and the public comment period shall be as established in 40 C.F.R. 124.10, effective July 1, 2009.

Section 6. Public Comments and Requests for Public Hearings. Provisions for public comments and requests for a public hearing shall be as established in 40 C.F.R. 124.11, effective July 1, 2009.

Section 7. Public Hearings. A public hearing shall be conducted as established in 40 C.F.R. 124.12, effective July 1, 2009.

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. An obligation to raise issues and provide information during the public comment period shall be as established in 40 C.F.R. 124.13, effective July 1, 2009.

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. Conditions requested by the Corps of Engineers or another government agency shall be as established in 40 C.F.R. 124.59, established July 1, 2009.

Section 10. Reopening of the Public Comment Period. The public comment period shall be reopened as established in 40 C.F.R. 124.14, effective July 1, 2009.

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall notify the applicant and each person who submitted written comments or requested notice of the determination.

(b) The notification shall include reference to the procedures to request a hearing to contest the determination.

(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:

(a) A later effective date is specified in the determination;

(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or

(c) Comments did not request a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(3) The determination, which is a condition precedent to demanding a hearing pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision.

Section 12. Response to Comments. Response to comments shall be as established in 40 C.F.R. 124.17, effective July 1, 2009.

Section 13. Hearings pursuant to KRS 224.10-420. (1) A determination pursuant to Section 11 of this administrative regulation shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) A hearing held pursuant to this section shall be subject to the provisions of KRS 224.10-440 and 224.10-470.

(3) Failure to raise an issue pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

Section 14. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director", "EPA", and "Regional Administrator" if the authority to administer the federal regulations cited in this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement the federal regulations cited in this administrative regulation.

(4) "Mail", as used in 40 C.F.R. 124.10 and cited in Section 5 of this administrative regulation, shall include electronic transmission. (9 Ky.R. 874; Am. 1136; eff. 6-1-83; 12 Ky.R. 554; eff. 12-10-85; 20 Ky.R. 3285; 21 Ky.R. 432; eff. 8-24-94; 29 Ky.R. 1087; 1597; eff. 12-18-02; TAm eff. 8-9-2007; 36 Ky.R. 2119-M; 2339; 37 Ky.R. 45; eff. 8-5-2010.)